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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,136	02/14/2002	Hideki Yamauchi	065933-0235	2912
20277 7590 04/29/2008 MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096				
EXAMINER				
PARRA, OMAR S				
ART UNIT		PAPER NUMBER		
2623				
MAIL DATE		DELIVERY MODE		
04/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/077,136

Applicant(s)

YAMAUCHI ET AL.

Examiner

OMAR PARRA

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/11/2008 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims **23** and **24** have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim **23** is rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al. (hereinafter 'Srinivasan', Patent No. 6,411,992) in view of Thomas et al. (hereinafter 'Thomas', Patent No. 7,305,696).

Regarding claim 23, Srinivasan teaches an image data transmission apparatus (**Broadcast server 10, Fig. 1; col. 2 lines 7-21; col. 4 lines 52-65; col. 5 lines 23-46**) comprising:

a transmission unit that transmits image data (**26, Fig. 2; col. 4 line 66-col. 5 line 9**);

a transfer condition table (**Tables on figs. 15-20; col. 7 line 47-col. 8 line 65**) which includes a time column including information about a time at which the image data should be transmitted (**Program Start time column, Fig. 15, Commercial break start time column, Fig. 16 or date, Fig. 17; col. 7 line 47-col. 8 line 65**),

a transmission destination column including information about a transmission destination area in which a receiving apparatus receiving the image data should be placed (**Broadcast criteria column, Fig. 17; Country, State and City columns, Fig. 18; IP address column, Fig. 20; col. 7 line 47-col. 8 line 65**), and

a control unit (**processor 24, Fig. 2**;) which detects the transmission destination area and a current time for transmission of the image data (**col. 4 line 57-col. 5 line 22; col. 7 line 47-col. 8 line 65**). On the other hand, Srinivasan does not explicitly teach:

a transfer condition column including information about a transmission condition in the form of a transmission rate of a network used to transmit the image data to the receiving apparatus in the transmission destination area; and

detects a transfer condition corresponding to the transmission destination area and the time thus detected, by refining to the transfer condition table, and controls the amount of image data to be transmitted in accordance with the transfer condition thus detected.

However, in an analogous art, Thomas teaches a system, method and apparatus for scheduling content to be broadcast through a software interface (Abstract; col. 3

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lines 33-43; col. 7 lines 42-59; col. 9 lines 26-45). Thomas teaches that in the schedule, every program is tabulated to show its broadcasting time, the assigned transmission bit-rate, etc (Fig. 20; col. 10 lines 32-54; col. 14 line 14-col. 15 line 3). At the time of transmission, and following the table or schedule specifications, each program is broadcast to users. The bit-rate of transmission is modified based on different conditions (col. 20 line 23-col. 21 line 50).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified Srinivasan's invention with Thomas' feature of including the transmission bit-rate in the schedule list for the benefit of having the transmitter not exceeding or not meeting the accorded or assigned transmission rate.

5. Claim **24** is rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al. (hereinafter 'Srinivasan', Patent No. 6,411,992) in view of Thomas et al. (hereinafter 'Thomas', Patent No. 7,305,696) as applied to claim 23 above, and further in view of Aharoni et al. (hereinafter 'Aharoni', WO 99/00984, provided by applicant as prior art on 05/03/2005).

Regarding claim 24, the combined teachings of Srinivasan and Thomas teach all the limitations of the claim it depends on. On the other hand, although Srinivasan and Thomas teach updating the bit-rate condition table **(the content provider can change it, col. 12 lines 30-62; the liaison unit can modify it, col. 18 lines 33-59; if the assigned bit-rate is less than the bandwidth allocation, col. 21 37)**, they do not

explicitly teach wherein the control unit updates the transfer condition table on the basis of a measured value of the transmission rate of the network occurring at a given time and received from the receiving apparatus receiving the image data or a relay terminal placed in the transmission destination area.

However, in an analogous art, Aharoni teaches a system for transferring video data in which the rate of transmission is changed dynamically after measuring the dynamically-changing congestion of the network, due to distance and time, through information sent from the receiving device at the receiving location, and the transmission bit-rate is set equal to the receiving rate (Abstract; page 6 lines 1-25; page 22 line 14-page 27 line 16).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified Srinivasan and Thomas' invention with Aharoni's feature of measuring network congestion and change the transmission bit-rate to fit network's congestion status for the benefit of maximizing the system's resources utilization.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR PARRA whose telephone number is (571)270-1449. The examiner can normally be reached on 9-6 PM schedule, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on 571-272-7294. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OP

/Christopher Grant/
Supervisory Patent Examiner, Art Unit 2623